IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1026 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VRUJLAL BHAGUBHAI BAROT

Versus

DHARAMNAGAR CO.OPERATIVE HOUSING SOCIETY LTD.

Appearance:

MR JF SHAH for Petitioners.

MR PJ KANABAR for Respondent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 22/11/2002

CAV JUDGEMENT

Rule. Mr. PJ Kanabar, ld. advocate waives service of Rule. The present Civil Revision Application is filed against order passed by the ld. Small Causes Court Judge, Ahmedabad, on 14.8.2002 in PSRP No. 2 of 2000. Upon an application moved by the present respondent, the ld. Judge has directed the present applicants to hand over vacant and peaceful possession of the suit premises to the bailiff of the court and has

further directed the bailiff to hand over the possession of the suit premises to the present respondent.

2. The brief facts, giving rise to the present Civil Revision Application, as stated in the order of the ld. Small Causes Court Judge, are as under. The present petitioner No.1 was serving in the respondent society as a Watchman and to give him facility to discharge his duties smoothly, one room and osari and bath room and W.C. were given to him only by way of a permissive user of the said facilities and the respondent was not collecting any rent from the petitioner No.1. The respondent society had issued a notice to the petitioner No.1 on 31.12.1996 and it was stated therein that with effect from 31.1.1997 the petitioner No.1's service was to be terminated and after his service was over he was asked to vacate the suit premises and permission granted to him for use of the said premises was sought to be withdrawn. Since the petitioner No.1 has refused to hand over the possession of the suit premises to the respondent, the respondent society has filed the abovereferred PSRP No. 2/2000 before the Small Causes Court, Ahmedabad under Section 41 of the Bombay Presidency Small Cause Courts Act, 1892 ("Act" for short). After considering the facts and circumstances of the case and after appreciating the evidence led by the respective parties before the trial court, the ld. Small Cause Court Judge has come to the conclusion that when the petitioner No.1's service was terminated by the respondent-society the petitioner had no right to reside in the suit premises and that the respondent was entitled for possession of the suit premises.

3. Being aggrieved by the aforesaid order, the present Civil Revision Application is filed before this Court. This Court had initially issued the notice and granted ad-interim relief against the execution and implementation of the order dated 14.8.2002 passed by the ld. Small Causes Court Judge in the abovereferred PSRP No. 2/2000. Upon service of the notice, the respondent-society appeared through its advocate and filed affidavit-in-reply opposing the Civil Revision Application and seriously contested the same and has strongly urged that the petitioners are not entitled to any relief from this Court.

4. At the joint request of the parties, the matter was taken up for final hearing. Mr. JF Shah, ld. advocate appearing for the petitioners have raised three-fold contentions in support of the petitioners' claim before this Court. The first and foremost point

raised by Mr.Shah is that the ld. Small Causes Court Judge has committed a serious error in not examining as to whether the aforesaid PSRP application was barred by limitation. He has further submitted that the Act does not specify any period of limitation within which an application under Section 41 of the Act is to be made. According to him, Section 48 of the Act provides that in all proceedings under Chapter 7 of the Act which contains Section 41 also, the Small Causes Court shall, as far as may be and except as otherwise provided in the Chapter, follow the procedure prescribed for the court of first instance by the Code of Civil Procedure. The provisions of Limitation Act, 1963, are not specifically excluded. He has therefore submitted that the application under Section 41 of the Act would be governed by the Article 137 of the Limitation Act, 1963. It was further submitted that the right to apply under Section 31 of the Act accrued to the petitioners on 1.12.1997 when alleged revocation of the licence of the petitioner was effected by notice dated 31.12.1996. The aforesaid PSRP application should have therefore been filed latest by 31.1.2000 whereas it was filed on 3.2.2000. It was, therefore, clearly barred by limitation.

5. Mr. Shah has raised a second contention to the effect that the respondent is a cooperative society registered under the provisions of the Gujarat Cooperative Societies Act, 1961, (for short "Societies Act") and that the present petitioner No.1 was the servant of the society and the dispute between the society and its servant related to the management of the society. He has therefore submitted that the respondent society should have taken recourse to Section 96 of the Societies Act and jurisdiction of the Civil Court is expressly barred under Section 166 of the Societies Act. He has therefore submitted that the ld. Small Causes Court Judge has exercised the jurisdiction which was not vested in him and hence the order passed by the ld. Small Causes Court Judge is ex facie without jurisdiction and deserves to be quashed and set aside.

6. The third contention raised by Mr. Shah is that the PSRP Application No.2/2000 was not properly signed. To make good this submission, he has relied on the provisions contained in Order 6 Rule 14 of the Civil Procedure Code which provides that the pleadings shall be signed by the party or his pleader (if any) provided that the party is, by reason of absence of other good cause, unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf. In the light of this provision,

Mr. Shah has invited this Court's attention to the memo of application which was signed by Shri Yagneshbhai Fulshanker Trivedi and verified by him claiming to be the Secretary of the respondent society. He has further submitted that in the pleadings it was nowhere mentioned that he was authorised to bring up this proceeding on behalf of the petitioner society. Mr. Shah has further submitted that the society is a body corporate and Order 29 Rule 1 of the Civil Procedure Code relates to the suit by or against Corporation which provides that any suit by or against Corporation, any pleadings may be signed and verified on behalf of the Corporation by the Secretary or by any Director or other principal officer of the Corporation, who is able to depose to the facts of the case. He has therefore submitted that though the pleading was signed by the Secretary of the Society he has not entered the witness box and deposed. It was the Chairman who has entered the witness box and deposed. He has therefore submitted that there was noncompliance of Order 6 Rule 14 and Order 29 Rule 1 of the Civil Procedure Code and in this view of the matter he has strongly contended that the ld. Judge should not have proceeded to adjudicate the application upon such defective pleadings. He has further submitted that subsequent adjudication cannot cure the initial drawback and since Section 41 of the Act provides for summary eviction, strict compliance of the procedure and requirement must be insisted upon. In support of his contention, Mr. Shah has relied on the decision of Delhi High Court in the case of M/s. Nibro Limited. vs. National Insurance Co.Ltd., - AIR 1991 Delhi 25, wherein it is held that Order 29 Rule 1 of Civil Procedure Code does not authorise persons mentioned therein to institute suits on behalf of the Corporation. It only authorises them to sign and verify the pleadings on behalf of the Corporation. It is well-settled that under Section 291 of the Companies Act except where express provisions made that the powers of a company in respect of a particular matter are to be exercised by the company in general meeting - in all other cases the Board of Directors are entitled to exercise all its powers. Individual directors have such powers only as are vested in them by the Memorandum and Articles. Thus, unless a power to institute a suit specifically conferred on a particular director he has no authority to institute a suit on behalf of the company. Needless to say that such a power can be conferred by the Board of Directors only by passing a resolution in this regard.

7. On the basis of the aforesaid three contentions raised by Mr. Shah on behalf of the petitioner, it was

strongly urged that the order passed by the trial court directing the petitioner to hand over the vacant and peaceful possession to the bailiff and further directing the bailiff to hand over the possession to the respondent is ex facie illegal, unjust, contrary to the provisions of the Act and hence deserves to be quashed and set aside.

8. Mr. PJ Kanabar, ld. advocate appearing for the respondent has dealt with in great detail all the three contentions raised by Mr. Shah on behalf of the petitioners and submitted that the said contentions are not tenable in law and no interference is called for by this Court while exercising the revisional jurisdiction under Section 115 of the Civil Procedure Code.

9. So far as the first contention with regard to the limitation is concerned, Mr. Kanabar has submitted that the contention of limitation cannot be taken in revision application as it is a mixed question of law and facts. He has further submitted that Article 137 of the Limitation Act, even if it is held to be applicable to the present case, the right to apply cannot be said to have accrued to the respondent on 1-2-1997 as contended by the petitioners. Article 137 of the Limitation Act reads as under;

"Part-II. Other applications.

137. Any other application for which no period of limitation is provided elsewhere in this division".	Three years when the right to apply accrues.	

He has emphasised the words "when the right to apply accrues". According to him, the period of limitation starts from the day when the right to apply accrues. To make good this submission, he has submitted that the notice dated 31.12.1996 was issued to the petitioner No.1 terminating his services and asking for possession of the disputed premises on or before 31.1.1997. On receipt of the said notice, the petitioner No.1, vide his reply dated 1-2/2/1997 asked for further clarification to the effect that in lieu of handing over of the possession of the premises what amount would be paid to the petitioner by the respondent society. The petitioner No.1 has further submitted in the said reply that on coming to know about the Secretary's point of view the petitioner No.1 would be able to take appropriate decision in the

matter of handing over of the possession of the disputed premises. Mr. Kanabar has therefore submitted that till the date of reply and thereafter also the petitioner No.1 did not raise any dispute from which day the right to apply can be said to have accrued to the society. Mr. Kanabar has further invited this court's attention to the provisions contained in Section 63 of the Indian Easements Act, which reads as under:-

> "63. Licensee's rights on revocation - Where a licence is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby, and to remove any goods which he has been allowed to place on such property."

On the basis of these provisions, Mr. Kanabar has submitted that on revocation of licence of the petitioner No.1 by notice dated 31.12.1996 and accordingly calling upon the petitioner No.1 to hand over the possession of the disputed premises on or before 31.1.1997, the petitioner No.1 was required to be given reasonable time to leave the property as provided in Section 63 of the Indian Easements Act. He has further submitted that even by replying the notice on 1-2/2/1997, the petitioner No.1 as such did not dispute anything with regard to the contents of the notice and therefore the respondent's right to apply as provided under Article 137 cannot be said to have accrued on 1-2-1997 as contended by the petitioners. He has further submitted that in view of the contents of the reply of the petitioner No.1 to the notice of the respondent-society, the right to apply has not accrued on the date of the aforesaid reply as contended by the petitioner No.1. Mr. Kanabar has further drawn the attention of this Court that on 1-4-1997, the petitioner has filed HRP Suit No. 466 of 1997 in the Small Causes Court, Ahmedabad and obtained an injunction against the respondent-society against eviction of petitioner No.1 from the disputed premises. The said injunction was vacated vide an order dated 28.11.1997 and as against that the petitioner No.1 preferred an Appeal From Order No. 139 of 1997 before the appellate bench of the Small Causes Court, Ahmedabad which was dismissed on 15.4.1999. The respondent-society, thereafter, filed the above application under Section 41 of the Act on 3-2-2000 which cannot be said to be barred by law of limitation.

10. With regard to the second contention of Mr. Shah about Section 96 and 166 of the Societies Act, Mr. Kanabar has submitted that the petitioners are estopped

from raising such contention in the present Civil Revision Application before this Court as undisputedly the petitioner No.1 on the earlier occasion has approached the trial court by preferring HRP Suit No. 466 of 1997 and also carried the matter of interim injunction to the appellate bench of the Small Causes Court, Ahmedabad and once having failed in both these proceedings the petitioners cannot turn around and contend that the Small Causes Court has no jurisdiction and it is a dispute within the meaning of Section 96 of the Societies Act and, therefore, Civil Court's jurisdiction is barred as per Section 166 of the said Act. Mr. Kanabar has further submitted that on plain reading of Section 96 of the Societies Act, the controversy involved in this application cannot be said to be a dispute within the meaning of Section 96 of the Societies Act. He has further submitted that the petitioner No.1 has approached the Labour Court with respect to the matter of termination of his services and he has further submitted that the matter of application under Section 41 of the Act is not a dispute touching the constitution, management or business of the respondent-society. On the basis of these submissions, Mr. Kanabar has strongly urged that this Court should reject the contention of the petitioners with regard to the jurisdiction of the Small Causes Court.

11. With regard to the last contention raised by Mr. Shah about Order 6 Rule 14 and Order 29 Rule 1 of the Civil Procedure Code, Mr. Kanabar has submitted that the petitioners are not entitled to raise such contentions in the present Civil Revision Application. He has further submitted that on bare perusal of PSRP Application No. 2 of 2000, it transpires that the application was signed by the Secretary of the respondent-society and it has been made subsequently clear by the contents of verification made by him at the end of the said application. He has therefore submitted that the requirement of Order 6 Rule 14 was duly satisfied. He has further submitted that a Cooperative Society cannot be said to be a "Corporation" within the meaning of Order 29 Rule 1 of the Civil Procedure Code. Alternatively, he has submitted that even if this provision of Code is held to be applicable, in view of the fact that the application was signed by the Secretary of the Society, the requirement of the said provision was also deemed to be satisfied. He has further submitted that there is no substance in the submission of Mr. Shah that the Secretary not only should sign the pleading but also should depose in the case. On the bare reading of Order 29 Rule 1 of Civil Procedure Code, it is not mandatory that the Secretary

should also depose in the case. He has further submitted that for application of Article 137 of the Limitation Act, the petitioners relied upon the notice signed by the Secretary of the Society. However, in the same breath, the petitioners wanted to contend that the application was dehors Order 6 Rule 14 and Order 29 Rule 1 of Civil Procedure Code. He has further submitted that it has come in the evidence of Shri RB Vyas, the President of the Society, who was examined at Exh. 34 that the application preferred by the Secretary was within the knowledge of the society. He has further submitted that the Secretary was able to depose in the case and nothing contrary to this has been brought on record by the petitioners. In this view of the matter, the third contention raised by Mr. Shah also deserves to be rejected.

12. I have heard at length both the ld. advocates appearing for the respective parties and I have also gone through the order passed by the ld. trial Judge. I do not find any substance in any of the contentions raised by Mr. Shah on behalf of the petitioners. Looking to the facts of the present case, it cannot be said that the application is barred by the period of limitation. The right to apply did not accrue on 1-2-1997 as contended by the petitioners, as admittedly the petitioner No.1 had given the reply and sought certain clarification in respect of the notice of termination dated 31-12-1996. It is also an admitted position that the petitioner No.1 has filed HRP Suit No. 466 of 1997 and injunction granted in the said suit was operative till 15-4-1999 when the appellate bench of the Small Causes Court has dismissed the appeal. Even Section 63 of the Indian Easements Act permits the licensee to have some reasonable time to leave the property affected. Taking this overall view of the matter, it cannot be said that the application filed by the respondent-society is barred by limitation. It cannot, therefore, be said that the ld. trial Judge has committed any error while rejecting the contention of the petitioner that the application is barred by limitation. The question of jurisdiction is also rightly decided by the trial court. The petitioner has himself earlier approached the trial court ventilating his grievance. It is not just and proper for the party to take contrary stand in respect of the same subject matter when it suits the petitioners to approach the Small Causes Court, the question of jurisdiction is not considered to be relevant but when he opposes the application filed by the respondent, it assumes significance according to the petitioner. This approach is highly deprecated and the principle of estoppel can

certainly be invoked in such cases. Even otherwise the dispute raised in the present matter cannot fall within the ambit of Section 96 of the Gujarat Co-operative Societies Act and the Civil Court's jurisdiction is, therefore, not barred under Section 166 of the Societies Act. As far as the last contention of defective pleading is concerned, this Court is of the view that the application was properly signed by the Secretary of the Society who was the duly authorised person to institute the suit on behalf of the respondent society. He was also able to enter into the witness box and depose on behalf of the society. Simply because at the time of trial the Chairman of the society has entered into the witness box and deposed, it cannot be said that there is violation of the provisions of Order 29 Rule 1 of Civil Procedure Code. The Delhi High Court judgment cited by Mr. Shah is not applicable to the facts of the present case and hence the present application shall not be entertained and the order of the trial court cannot be reversed only on the ground of such defective pleadings. While exercising power under Section 115 of the Civil Procedure Code, this Court cannot sit in appeal over the judgment of the subordinate court and even if other view is possible, the same cannot be substituted in revision. I, therefore, do not find any error in the order passed by the ld. Small Causes Court Judge, which requires any interference by this Court. Hence, this Civil Revision Application is rejected. Rule is discharged with no order of costs. Interim relief vacated.

rmr. [K.A. Puj, J.]